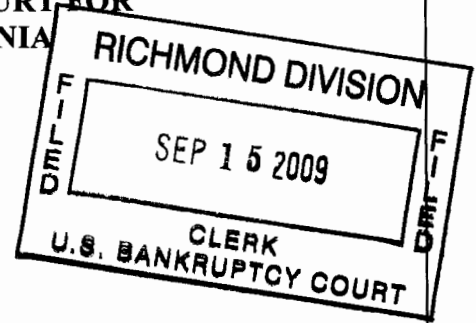


UNITED STATES BANKRUPTCY COURT FOR
EASTERN DISTRICT OF VIRGINIA
Richmond Division



In re:

CIRCUIT CITY STORES, INC.

Chapter 11
CASE NO. 08-35653-KRH

Debtor.

**CREDITOR ROBERT GENTRY'S PRELIMINARY RESPONSE TO DEBTORS'
NINETEENTH OMNIBUS OBJECTION TO CLAIMS [RECLASSIFICATION OF
CERTAIN MISCLASSIFIED CLAIMS TO UNSECURED, NON-PRIORITY CLAIMS]**

COMES NOW, Creditor Robert Gentry, through his undersigned counsel, pursuant to Fed. R. Bankr. P. 3007, Local Bankruptcy Rule 3007-1(D), and this Court's April 1, 2009 Order Establishing Omnibus Objection Procedures and Approving the Form and Manner of Notice of Omnibus Objections [Docket No. 2881], and responds to the Debtors' Nineteenth Objection to Claims [Reclassification of Certain Misclassified Claims to Unsecured, Non-Priority Claims] [Docket No. 3703] and states as follows:

Argument

1. The Debtors filed voluntary petitions under Chapter 11 of the Bankruptcy Code on November 10, 2008 and continue to manage their affairs as debtors-in-possession.
2. On August 29, 2002, Creditor Gentry filed his lawsuit on behalf of himself and all other customer service managers employed by Debtors seeking overtime compensation, compensation for missed meal and rest breaks, waiting time penalties and attorneys' fees under California law. The class action-styled case, which is entitled *Gentry v. Circuit City, Inc.*, is filed in the Los Angeles Superior Court, Case No. BC 280631.

Creditor Gentry seeks to represent all California-based salaried customer service managers who were employed by Debtors and who were not paid overtime compensation, or provided meal and rest breaks.

3. California Labor Code section 203 provides "waiting time penalties" for employees who are not paid all wages due and owing at the time of the termination of their employment. This code section provides in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with [specified statutes], any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until an action therefore is commenced; but the wages shall not continue for more than 30 days. Lab. Code § 203

4. On January 13, 2009, pursuant to this Court's Order regarding creditor claims, Creditor Gentry - through his counsel - filed a timely creditor claim with the bankruptcy administrator, Kurtzman Carson Consultants.
5. On or about June 22, 2009, Debtors filed their Nineteenth Omnibus Objection to Claims [Reclassification of Certain Misclassified Claims to Unsecured, Non-Priority Claims]. In its Objection, the Debtors' object to the following claim filed by Creditor Gentry:
- Claim No.: 6052 Claim Amount: \$7,070,131.60
6. With its Objection, Debtors seek to reclassify Creditor Gentry's claim from "Priority" to "General Unsecured."
7. Creditor Gentry objects to this action because this claim was properly filed as "Priority" under U.S.C. section 507(a)(4), which provides for the payment of wages, salaries or commissions (up to \$10,950) earned within 180 days before filing of the bankruptcy petition or cessation of the Debtors' business, whichever is earlier.
8. To the extent that Plaintiff and the putative class worked for Debtors 180 days prior to the Petition Date and were not paid all wages due and owing, Creditor Gentry's claim is properly classified as "Priority."
9. Debtors are in exclusive possession of the information necessary for Creditor Gentry to value this claim in any more detail. Specifically, Debtors hold the payroll, employment

- 1 and time records, including the pay rates and number of weeks worked by Creditor
2 Gentry and the putative class 180 days prior to November 10, 2008 (the Petition Date).
- 3 10. Counsel for the parties have met and conferred regarding Debtors' Nineteenth Omnibus
4 Objection to Claims (Reclassification of Certain Misclassified Claims to General
5 Unsecured, Non-Priority Claims). Debtors agreed to adjourn their objection as to
6 Creditor Gentry's claim upon the filing of a Preliminary Response.
- 7 11. Further, since Debtors' filing of its voluntary petition, the trial court proceedings of
8 Creditor Gentry have been stayed under Code of Civil Procedure section 916 and also
9 pursuant to the federal bankruptcy law "automatic stay" rules.
- 10 12. Due to the automatic stay, Creditor's counsel is prohibited from conducting discovery
11 against Debtors that would be necessary to evaluate Creditor Gentry's claim with more
12 particularity.
- 13 13. Debtors' counsel has informed Creditor's counsel that this will be a "liquidating"
14 bankruptcy. In addition, Debtors' counsel informed Creditor Gentry that given Debtors'
15 limited financial resources, matters that would otherwise be returned to trial court(s) are
16 being kept in the Bankruptcy Court in order to curb the cost of litigating claims.
- 17 14. Based on the foregoing, Debtors' Objection, which seeks to modify the claims of
18 Creditor Gentry and the putative class, is improper.

19
20 Respectfully submitted,

21 Dated: September 1, 2009

RIGHETTI LAW FIRM, P.C.

22
23 
24 Matthew Righetti
25 Attorney for Creditor, Robert Gentry

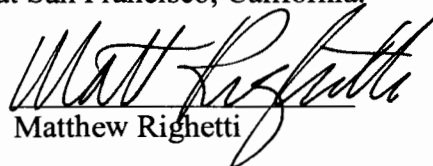
DECLARATION OF MATTHEW RIGHETTI IN SUPPORT OF CREDITOR ROBERT GENTRY'S PRELIMINARY RESPONSE TO DEBTORS' NINETEENTH OMNIBUS OBJECTION TO CLAIMS [RECLASSIFICATION OF CERTAIN MISCLASSIFIED CLAIMS TO UNSECURED, NON-PRIORITY CLAIMS]

I, Matthew Righetti, do hereby declare as follows:

1. I am over the age of 18 years old and competent to testify. I have personal knowledge of the facts contained in this Declaration, and they are true and correct to the best of my knowledge and belief.
2. I am counsel for Creditor Robert Gentry. This Declaration is in support of Creditor Gentry's Response to Debtors' Nineteenth Omnibus Objection to Claims [Reclassification of Certain Misclassified Claims to Unsecured, Non-Priority Claims].
3. The parties agree that Debtor would adjourn their objection as to Creditor Gentry's claim upon the filing of a Preliminary Response.
4. Debtors' counsel has informed me that this will be a "liquidating" bankruptcy. In addition, Debtors' counsel informed me that given Debtors' limited financial resources, matters that would otherwise be returned to trial court(s) are being kept in the Bankruptcy Court in order to curb the cost of litigating claims.
5. On behalf of Creditor Gentry, I hereby reserve all rights to supplement this Response at a later date, to the extent so necessary.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 1 day of September, 2009, at San Francisco, California.


Matthew Righetti

ORIGINAL

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re: : Chapter 11
: Case No. 08-35654
CIRCUIT CITY STORES, INC., et al. :
: Jointly Administered with
Debtors : Case No. 08-35653

PROOF OF SERVICE

STATE OF CALIFORNIA

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the action. My business address is Righetti Law Firm, P.C., 456 Montgomery Street, Suite 1400, San Francisco, California, 94104.

On Tuesday, September 01, 2009 I served the foregoing document described as:

- **CREDITOR ROBERT GENTRY'S PRELIMINARY RESPONSE TO DEBTORS' NINETEENTH OMNIBUS OBJECTION TO CLAIMS [RECLASSIFICATION OF CERTAIN MISCLASSIFIED CLAIMS TO UNSECURED, NON-PRIORITY CLAIMS]; DECLARATION OF MATTHEW RIGHETTI IN SUPPORT OF CREDITOR ROBERT GENTRY'S PRELIMINARY RESPONSE TO DEBTORS' NINETEENTH OMNIBUS OBJECTION TO CLAIMS [RECLASSIFICATION OF CERTAIN MISCLASSIFIED CLAIMS TO UNSECURED, NON-PRIORITY CLAIMS]**

on the interested parties by administering a true copy either by facsimile or in sealed envelopes addressed as follows:

Rex Darrell Berry
BERRY & BLOCK, LLP
2150 River Plaza Dr. Ste. 415
Sacramento, CA 95833
Fax: 916-564-2024
RBerry@berryblock.com

///

Kelly L. Hensley Document Page 6 of 7

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Circuit City Stores, Inc., et al.

Claims Processing Department

KURTZMAN CARSON CONSULTANTS LLC

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(X) VIA U.S. MAIL:

I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice such envelopes would be deposited with the U.S. postal service on Tuesday, September 01, 2009 with postage thereon fully prepaid, at San Francisco, California.

///

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17 **(X) VIA OVERNIGHT MAIL:**

18 VIA: By delivering such documents to an overnight mail service or an authorized courier in an
19 envelope or package designated by the express service courier addressed to the persons on whom
20 it is to be served.

21 I declare under penalty of perjury under the laws of the State of California that the above
22 is true and correct and was executed on Tuesday, September 01, 2009, at San Francisco,
23 California.

24 
25 Brittany Gery